

GREENFIRE LAW, PC

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

As You Sow, a 501 (c)(3) non-profit
corporation,

Plaintiff,

v.

Etsy, Inc., and DOES 1-20, inclusive

Defendants,

Case No.: 24-cv-04203-MMC

**DECLARATION OF DANIELLE FUGERE
IN SUPPORT OF MOTION TO REMAND**

Date: October 11, 2024

Time: 9:00 a.m.

Dept: Courtroom 7, 19th Floor

Federal District Court

450 Golden Gate Ave.

San Francisco, CA 94102

Hon. Maxine M. Chesney, presiding

1 I, Danielle Fugere do declare and state:

2 1. If sworn as a witness, I could and would testify to my personal knowledge of the
3 facts set forth herein.

4 2. I am the President and Chief Counsel for As You Sow (“AYS”), a position I have
5 held since 2012. Prior to that, I served as Executive Director of the Environmental Law
6 Foundation (“ELF”) for two years, focusing on environmental health and water protection.

7 3. During my career, I estimate that I have been personally involved in hundreds of
8 Proposition 65 matters—some settling out of court before a complaint was filed, others resolving
9 after a complaint was filed. The vast majority of these cases were consumer product exposures.

10 4. Since 1992, I have followed trends in enforcement of Proposition 65.

11 5. In our Proposition 65 cases, penalties for consumer product exposures are measured
12 based on a matrix that includes the number of units sold, the time period during which exposures
13 occurred, the harm associated with the exposures, and the defendant's response to curing the
14 violations, among others. I am not aware of a Proposition 65 judgement or settlement in which the
15 maximum penalty award of \$2,500 per unit sold without a warning was levied against a violator.
16 Penalties are often lower, particularly when injunctive relief such as reformulation is agreed to, or
17 where violators otherwise prevent exposures or diligently provide the clear and reasonable
18 warnings required by law. In my experience, public enforcers and the courts assiduously apply the
19 penalty factors found at Health & Safety Code 24249.7(b)(2).

20 6. The median penalty for As You Sow’s consumer Proposition 65 cases since I have
21 been at the organization is \$8,580 and the median in lieu payment is \$8,500. The average penalty is
22 \$10,809 and the average in lieu payment is \$12,080.

23 7. We have not yet had the opportunity for discovery in this case, but based on our
24 investigation of Etsy and our understanding of the market in skin whitening creams, we do not
25 expect the number of sales into California in this case to be high.

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1 I make this declaration under penalty of perjury under the laws of the United States of
2 America, executed this 24th day of July, 2024 in Oakland, California.

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4 GREENFIRE LAW, PC

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6 By: /s/ Danielle Fugere

7 **DANIELLE FUGERE**
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9

10 Under N.D. Cal. Local Rule 5-1(i)(3), in lieu of a signature, I attest that I obtained
11 approval, on July 24, 2024, from Danielle Fugere for the filing of this declaration.
12

13 /s/ Rachel Doughty

14 Rachel Doughty

15 ATTORNEY FOR PLAINTIFFS
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